

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 05-8 E
)	
MICHAEL KOSTENIUK)	

MOTION TO VACATE WRIT OF HABEAS CORPUS AD PROSEQUENDUM

AND NOW, comes the defendant, Michael Kosteniuk, by his attorney, Thomas W. Patton, Assistant Federal Public Defender, and files his Motion to Vacate Writ of Habeas Corpus ad Prosequendum in support thereof sets forth as follows:

1. Mr. Kosteniuk pled guilty to receiving child pornography and this Court sentenced him to five years of imprisonment followed by seven years of supervised release.

2. The United States Court of Appeals for the Third Circuit affirmed Mr. Kosteniuk's term of supervised release but vacated the condition of release that he not possess any materials depicting sexually explicit conduct. The case has been remanded for resentencing consistent with the Third Circuit's opinion.

3. The Court has scheduled Mr. Kosteniuk's resentencing for January 3, 2008, at 11:00 a.m. and issued a writ of habeas corpus ad prosequendum directing the United States Marshals Service to have Mr. Kosteniuk present at the hearing.

4. After consultation, Mr. Kosteniuk has decided to waive his right to be present at the resentencing and will be filing a written waiver of his right to be present in the near future.

5. Mr. Kosteniuk respectfully requests that this Honorable Court vacate the writ of habeas corpus ad prosequendum.

6. The United States Attorney's Office does not oppose this motion.

WHEREFORE, the defendant, Michael Kosteniuk, respectfully requests that this Honorable Court vacate the writ of habeas corpus directing the United States Marshals Service to have Mr. Kosteniuk present at the January 3, 2008 resentencing.

Respectfully submitted,

/s/ Thomas W. Patton

Thomas W. Patton

Assistant Federal Public Defender

PA I.D. No. 88653